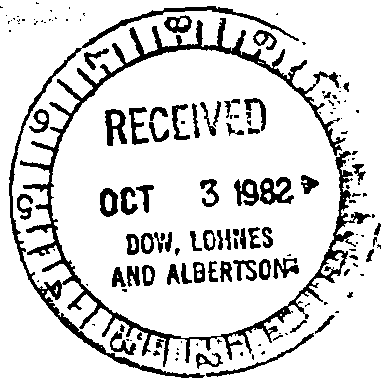


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JACK M. PARR
OF COUNSEL

RECEIVED

September 30, 1983

OCT 4 1983

Charles H. Helein, Esq.
Dow, Lohnes & Albertson
1225 Connecticut Avenue
Washington, D.C. 20036

DOCKET FILE COPY ORIGINAL

FCC
Office of the Secretary

Dear Chuck:

Enclosed herewith is a copy of an Order entered in the District Court of Lancaster County, Nebraska, in the case of TV Transmission Inc., et al, v. Nebraska Public Service Commission. As is seen, by its terms, the Order determines that the Nebraska Public Service Commission lacks jurisdiction to regulate pole attachment agreements with cable television companies.

District Courts are courts of original jurisdiction in Nebraska. Appeals from the District Court must be taken within 30 days of the date of the decision appealed from and if no appeal is taken, the decision of the District Court is a final decision.

In this instance, the Order was entered June 29, 1983, and no appeal has been taken therefrom. Thus, the decision is final.

Best regards.

Very truly yours,

FOR THE FIRM:

Donn E. Davis
Donn E. Davis

DED:ek

Enclosure

IN THE DISTRICT COURT OF LANCASTER COUNTY, NEBRASKA

TV TRANSMISSION INC.; TELE-
COMMUNICATIONS, INC.; CABLE
SERVICES, INC.; CENTRAL CABLE
SERVICES, INC.; SENEBC CABLE
SERVICES, INC.; and U. A.
COLUMBIA CABLEVISION, INC.,

Plaintiffs,

vs.

NEBRASKA PUBLIC SERVICE
COMMISSION,

Defendant.

Docket 352

Page 297

FILED/ACCEPTED

APR 26 2010

Federal Communications Commission
Office of the Secretary

COPY

CLERK'S OFFICE, DISTRICT COURT
LANCASTER COUNTY, NEBRASKA

FILED

JUN 29 1983

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This matter came on before the court on the 19th day of April, 1983, upon the plaintiffs' petition for a declaratory judgment. Trial was had, evidence received, the case briefed and submitted, and the court, being fully advised, finds that:

1. In this action the plaintiffs challenge the legality of the defendant's assertion of jurisdiction over pole attachment agreements between telephone utilities and community antenna television companies. The defendant Commission has asserted its jurisdiction first by a letter dated August 22, 1979, and then by adoption of Chapter V, Rule 32, of its rules and regulations.

2. Under the above regulatory scheme, in the event that there is a disagreement regarding a pole attachment agreement between a CATV company and a telephone utility, the Commission will act upon a petition by either of the parties to establish just and reasonable rates, terms, and conditions for pole attachment agreements. The

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DATE 6-29-83
NO.
ROLL NO. 1403

CLERK DISTRICT COURT
LANCASTER COUNTY, NEBRASKA

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Commission's rules and regulations state that it has the authority to consider and does consider the interests of the CATV customers, as well as the interests of the telephone company customers.

3. The parties have stipulated that the CATV companies are not common carriers as defined in the Constitution of the State of Nebraska and by decisions of the Nebraska Supreme Court. Unless the state can certify to the Federal Communications Commission that it does in fact regulate pole attachment agreements and that it has both the authority to consider and does consider the interests of the subscribers of the CATV companies, the state will not have regulatory jurisdiction, and jurisdiction will remain with the FCC. Consistent with all the above, the defendant contends that it has properly asserted its jurisdiction.

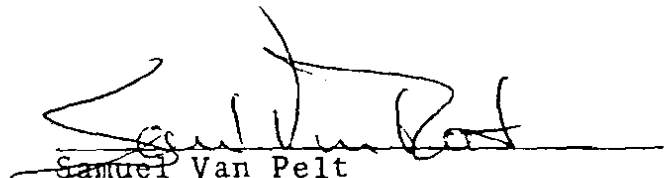
4. The plaintiffs point out that Sections 18-2201 through 18-2205 relating to municipalities, and Sections 23-383 to 23-388 relating to counties, grant regulatory authority over CATV companies to those local governing bodies. Plaintiffs then argue that since the legislature has specifically provided for CATV regulation, and the jurisdiction of the defendant is limited by the Constitution to common carriers, which the plaintiffs are not, therefore the defendant has no constitutional or statutory authority to assert its jurisdiction over the plaintiffs. Plaintiffs further argue that the defendant's jurisdiction over telephone utilities is limited to their offering telephone services, and does not extend to the validity of contracts into which

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Section 32 of Chapter V of the Rules and Regulations of the Nebraska Public Service Commission, sometimes referred to as Rule 53, be and the same is hereby declared to be unconstitutional and an unlawful exercise of jurisdiction by the defendant Public Service Commission.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the costs of this action be taxed to the defendant.

DATED this 27th day of June, 1983.

BY THE COURT:


Samuel Van Pelt
District Judge

DOW, LOHNES & ALBERTSON

1225 CONNECTICUT AVENUE

WASHINGTON, D. C. 20036

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FRED W. ALBERTSON
THOMAS W. WILSON

THOMAS H. WALL
L. ADAM ROBERTS

October 4, 1983

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OCT 4 1983

FCC
Office of the Secretary

Federal Communications Commission
Washington, D.C.

DOCKET FILE COPY ORIGINAL

Attention: Jack D. Smith
Chief, Common Carrier Bureau

Re: Decertification of Nebraska
Public Service Commission
Over Pole Attachments

Gentlemen:

Enclosed is the June 29, 1983 decision of the District Court of Lancaster County, Nebraska in T.V. Transmission, Inc. v. Nebraska Public Service Commission, establishing that the Nebraska Public Service Commission does not have jurisdiction over pole attachments in the State of Nebraska. The decision, as the enclosed letter from Nebraska counsel indicates, is final and constitutes the law of Nebraska on the issue of the PSC's jurisdiction over poles.

It is respectfully requested that the undersigned be informed whether this decision requires decertification of the Nebraska PSC over poles and conduits and vests thereby such jurisdiction in the Federal Communications Commission.

Very truly yours,

Charles H. Helein

CHH:bb

Enclosures

cc: (w/) Margaret Wood - Federal Communications Commission-
Common Carrier Bureau

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FILE COPY

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FILED/ACCEPTED

APR 26 2010

Federal Communications Commission
Office of the Secretary

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Washington, D.C.

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Common Carrier Bureau

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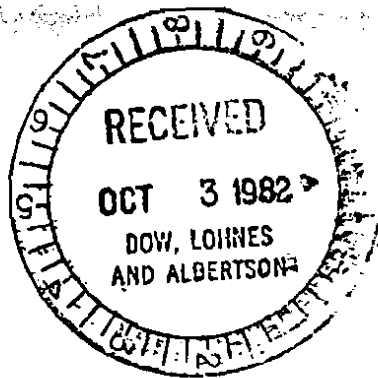
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October 4, 1983

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September 30, 1983

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FOR THE FIRM:


Donn E. Davis

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Plaintiffs,

vs.

NEBRASKA PUBLIC SERVICE
COMMISSION,

Defendant.

) Docket 352

Page 297

CLERK'S OFFICE, DISTRICT COURT
LANCASTER COUNTY, NEBRASKA

FILED

JUN 29 1983

CLERK DISTRICT COURT

COPY

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CLERK DISTRICT COURT
LANCASTER COUNTY, NEBRASKA

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BY THE COURT:


Samuel Van Pelt
District Judge